IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Writ Petition No.629 of 2001.

Judgment Reserved on:01.03.2007

Date of decision: 24.04.2007

Dhani Ram **….Petitioner**

Versus

Union of India and Others **….Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1] *No.*

For the Petitioner: **Mr.P.P. Chauhan, Advocate.**

For the Respondents: **Mr.Ravinder Thakur, Central Government Counsel.**

Dev Darshan Sud,J.

This writ petition has been filed by the petitioner on the allegations that he was a member of the Indian Armed Forces, having joined the Indian Army on 16.12.1941 and discharged from Army service after having completed 22 years and 234 days. At the time of his superannuation, the petitioner was holding the rank of Havaldar. The petitioner has alleged that he has been awarded a number of medals during war operation in 1947 to 1949 and 1958 to 1960 etc. After his discharge from the Army, the petitioner was appointed Head Constable with SSB in the pay scale of Rs.110-3-131-4-143-BB-4-155. The appointment letter

---

[1] ***Whether the reporters of Local Papers may be allowed to see the judgement***? Yes.

Annexure P-1 incorporates that the post is purely temporary upto 28th February, 1968 in the first instance. The petitioner has alleged that he served against this post up to 15.6.1979 i.e. for a period of about 12 years.

The case of the petitioner is that having put in more than 12 years service, he was entitled to pension. According to the petitioner, for all intents and purposes he was a regular employee and since he was given annual increments and underwent training for promotion to the next higher post and was granted all the benefits, allowances admissible to regularly appointed employees etc., there was no justification of withholding pension. On his superannuation, the petitioner approached the respondents for payment of pension which was disallowed on the ground that according to Government of India's decision, a temporary Government servant is not eligible for the grant of pension or death-cum-retirement gratuity. Respondents submit that the petitioner remained a temporary employee and was reemployed on year to year basis as it was the policy of the Government to employ ex-servicemen in this capacity only and the policy was revised in 1981. The petitioner having retired on 15.6.1979 had not put in 20 years of service as a temporary employee to entitle him to payment of pension.

I have heard learned counsel for the parties and have gone through the record. The service profile of the petitioner is not disputed. However, according to the respondents, he is not entitled for pension as he has not completed 20 years of service according to the Government of India's Decisions under Rule 19(1) of the CCS (Pension) Rules, 1972. According to learned counsel for the respondents, Rule 19(1), is a bar for the grant of pension to the petitioner.

Learned counsel for the petitioner has referred to the Central Reserve Police Force Rules, 1955 and submitted that there is no provision for temporary posts in the Rules. According to him, the force as composed under Rule 5 does not consist of any temporary para-military soldiers/officers. Learned counsel submits that coupled with the fact that the petitioner was being granted a regular scale, annual increments and all other allowances and perquisites, and even considered for promotion to the next higher post etc., itself shows that barring the nomenclature, the petitioner was serving as a confirmed employee and not as a temporary employee. He was performing the same duties and responsibilities of a regular para military jawan.

Learned counsel for the respondents submits that the post which the petitioner was holding was on year to year basis. He also places reliance on OM No.38/16/Pension Unit/80 dated 30th December, 1980,

which states that the Government servants were to get pension only after completion of 20 years of service. It was urged that the post held by the petitioner is purely temporary.

The averments that the petitioner served in the SSB as Head Constable upto 15.6.1979 and that he was superannuated after completing 12 years service, were admitted. It is also admitted that the petitioner was being given annual increments etc. while in service.

Note-1 to Rule 19, on which reliance is placed and which has been filed as Annexure R-1, reads as under:-

> ". . . . The Government had issued orders vide OM No.38/16/Pension Unit/80, dated the 30th December, 1980, allowing the government servants to get pension after completion of twenty years of service either on invalidation or superannuation."

Reliance on Note-1 to Rule -19 as reproduced above is wholly misplaced. This note is dated 30.12.1980. It is admitted that the petitioner had already superannuated from service on 15.6.1979. No material has been placed on the record to show that this note was applicable to the petitioner at the time when the petitioner was in service. Otherwise, reading of Rule 19 shows that there is no prohibition for the grant of pension to the petitioner.

I am unable to accept the contentions of the learned counsel for the respondents. The reliance

placed on Note-1 to Rule-19 is misplaced. It does not state that the minimum service required is twenty years in a particular capacity. Learned counsel for the petitioner has drawn my attention to Rule 49 in which qualifying service of ten years has been taken as a bare minimum for grant of pension. The arguments of learned counsel for the respondents that the post was temporary cannot be accepted. Barring the first letter of appointment, there is nothing on the record to substantiate this contention. The fact alleged by the petitioner that he was getting a regular scale, increments, all service benefits and that he was even sent up for training for being promoted to the next higher post, has not been denied. There is no difference in the nature of the duties performed by the petitioner against a post which was purportedly being extended from year to year and those of the Jawans who were recruited against permanent post. The only way to rebut his allegation would have been to have produced on record material to show the difference in the nature of duties performed by the petitioner from time to time, but such record having not been produced, I find myself unable to accept the contention of the learned counsel for the respondents. Further for the purposes of grant of pension it is rule 3(q) and 49 of the Central Civil Services Pension Rules, which would be applicable.

In the circumstances, I hold that the order rejecting the case of the petitioner is illegal. Accordingly, Annexure P-5, P-7 are quashed and set aside. It is directed that the case of the petitioner for grant of pension will be reconsidered afresh in accordance with law. Since the petitioner had superannuated in the year 1979, it is directed that the entire exercise will be completed within a period of two months from the date of this judgement. The writ petition is disposed of. There shall be no order as to costs.

April 24, 2007 **(Dev Darshan Sud)**
(aks/ss) **Judge**